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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,172	03/12/2004	Barry Lynn Bradford	99-063-MIX	8153

7590

05/17/2005

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EXAMINER

VU, VIET DUY

ART UNIT

PAPER NUMBER

2154

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/799,172

Applicant(s)

BRADFORD ET AL

Examiner

Viet Vu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,3,5-11,14,16-22,26-29,31,32,34-40,44,45 and 47-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14 and 16-22 is/are allowed.
- 6) ☒ Claim(s) 2,7-10,26,28,31,36-39,44 and 49-52 is/are rejected.
- 7) ☒ Claim(s) 3,5,6,11,27,29,32,34,35,40,45,47,48 and 53 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Rejections:

1. The text of 35 U.S.C. § 103(a) cited in the previous office action is hereby incorporated by reference.

2. Claims 2, 7-10, 26, 28, 31, 36-39, 44 and 49-52 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ahmed et al, U.S. pat. No. 6,629,148.

Per claim 2, Ahmed discloses a method and system for balancing loads between a plurality of paths comprising:

- a) identifying a path having a highest total path usage (see col 8, lines 23-31),
- b) identifying a path having a lowest total path usage (col 8, line 32),
- c) calculating a difference between the highest path usage and the lowest path usage (col 8, lines 34-35),
- d) performing load balancing if the calculated difference exceeds a threshold amount by moving the path having highest path usage from receiving new traffic (i.e., setting the PHS value to zero) (see col 6, lines 15-19 and col 7, lines 34-38).

Ahmed does not explicitly associating each path usage with an I/O device.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize Ahmed's

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invention in any conventional network applications including network storage device because it would have allowed balancing loads for such network resources (see col 10, lines 33-45).

Per claims 7-10, Ahmed teaches that the path usage is calculated based upon number of connections, response time, etc., (see col 5, lines 21-43).

Claims 26, 28, 31, 36-39, 44 and 49-52 are similar in scope as that of claims 2 and 7-10.

Allowable Subject Matter:

3. Claims 3, 5-6, 11, 27, 29, 32, 34-35, 40, 45, 47-48 and 53 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. Claims 14 and 16-22 are allowed over prior art of record.

Response to Amendment:

5. Applicant's arguments filed on 1/6/2005 with respect to claims 2, 7-10, 26, 28, 31, 36-39, 44 and 49-52 have been fully considered but are moot in view of new ground of rejection set forth above.

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Conclusion:

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viet Vu whose telephone number is 571-272-3977. The examiner can normally be reached on Monday through Thursday from 8:00am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee, can be reached on 571-272-3964.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



VIET D. VU
PRIMARY EXAMINER

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5/12/05